
United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of

LEWIS N. MERRITT,

Bankrupt.

LEWIS N. MERRITT,

Appellant,

vs.

S. H. PETERS,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

FILED

MAY 16 1927

PAUL K. O'BRIEN,
CLERK

No.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant:

NICHOLAS W. HACKER, Esq.,
Pacific-Southwest Building,
Pasadena, California.

For Appellee:

WILLIAM T. CRAIG, Esq.,
Board of Trade Building,
Los Angeles, California.

District Court of the United States
Southern District of California
Southern Division

IN THE MATTER OF LEWIS
N. MERRITT,

No. 9569-J

Bankrupt.

IN BANKRUPTCY

At Los Angeles, in said District, on the 1st day of April, 1927, before the said Court in Bankruptcy, the petition of LEWIS N. MERRITT that he be adjudged bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy having been heard and duly considered, the said LEWIS N. MERRITT is hereby declared and adjudged bankrupt accordingly.

It is thereupon ordered that said matter be referred to James L. Irwin, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said LEWIS N. MERRITT shall attend before said referee on the 5th day of April, 1927, at his office in Los Angeles, California, at 2 o'clock afternoon, and thenceforth shall submit to such orders as may be made by said referee or by this Court relating to said matter in bankruptcy.

Dated, April 1, 1927.

Paul J. McCormick

District Judge.

[Endorsed]: No. 9569-J Bankruptcy. United States District Court Southern District of California Southern Division In the Matter of Lewis N. Merritt Bankrupt. In Bankruptcy. Adjudication and Order of Reference Filed Apr 1, 1927 at 20 min. past 12 o'clock P. M. R. S. Zimmerman, Clerk. B. B. Hansen, Deputy.

In the District Court of the United States
FOR THE SOUTHERN DISTRICT
OF CALIFORNIA

Southern Division

In Bankruptcy No. 9569-J.

IN THE MATTER OF

LEWIS N. MERRITT,

Bankrupt.

} Referee's Certificate
of Compliance.

TO THE HONORABLE THE JUDGES OF THE
UNITED STATES DISTRICT COURT, SOUTH-
ERN DISTRICT OF CALIFORNIA

I, JAMES L. IRWIN, Referee in Bankruptcy, in charge of this proceeding, do hereby certify that the said Lewis N. Merritt, was on the 1st day of April 1927, adjudged bankrupt; that I have given notice of the hearing of the first meeting of creditors herein as provided by law, and said meeting was duly held on the 26th day of April, 1927, at which meeting the said bankrupt attended.

That the filing fees have been paid, and so far as appears from the records on file in my office, said bankrupt has conformed to the requirements of the Bankruptcy Act and has not committed any offense or done any of the acts which should be an objection to his discharge, and he is, in my opinion, so far as appears, entitled to his discharge.

Dated November 1st 1927

Earl E. Moss

Referee in Bankruptcy.

[Endorsed]: In the District Court of the United States For the Southern District of California southern Division In Bankruptcy No. 9569-J In the matter of Lewis N. Merritt. Bankrupt. Referee's Certificate of Compliance. Filed Nov 1 1927 at min. past 1 o'clock P m R. S. Zimmerman, Clerk B. B. Hansen Deputy James L. Irwin Referee in Bankruptcy 834 H. W. Hellman Bldg. Los Angeles, Cal.

Bankrupt's Petition for Discharge and Order Thereon
(Form 57)

In the District Court of the United States SOUTH-
ERN District of CALIFORNIA.

In the Matter of LEWIS N. MERRITT Bankrupt.	} }	In Bankruptcy Secs. 14 and 58 No. 9569-J
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To the Honorable PAUL J. McCORMICK, Judge of
the District Court of the United States for the
Southern District of California.

Lewis N. Merritt, of Pasadena, in the County of Los Angeles and State of California in said district, respectfully represents that on the 1st day of April, last past, he was duly adjudged bankrupt under the Acts of Congress relating to bankruptcy; and that he has duly surrendered all his property and rights of property, and has fully complied with all the requirements of said acts and of the orders of the Court touching his bankruptcy.

Wherefore he prays that he may be decreed by the Court to have a full discharge from all debts provable

against his estate under said Bankruptcy Acts, except such debts as are excepted by law from such discharge.

Dated this 14th day of October, A. D. 1927.

Lewis N. Merritt,
Bankrupt.

Order of Notice Thereon

UNITED STATES OF AMERICA, }
Southern District of California }^{ss}

On this 14th day of October, A. D. 1927, on reading the foregoing petition, it is—

Ordered by the Court, that a hearing be had upon the same on the 5th day of December, A. D. 1927, before said Court, at Los Angeles in said District, at 10 o'clock in the forenoon; and that notice thereof be published in the LOS ANGELES NEWS, a newspaper printed in said district, and that all known creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of the said petitioner should not be granted.

And it is further ordered by the Court, that the Referee shall send by mail to all known creditors copies of said petition and this order, addressed to them at their places of residence as stated.

Witness the Honorable Wm. P. James, Judge of the said Court, and the seal thereof, at Los Angeles in said district, on the 14th day of October, A. D. 1927.

[SEAL]

R. S. ZIMMERMAN, Clerk.

By B. B. Hansen, Deputy.

[Endorsed]: No. 9569-J. United States District Court, Southern District of California (Bankruptcy). In the matter of Lewis N. Merritt, bankrupt. Bankrupt's

Petition for Discharge and Order Thereon. Filed Oct. 14, 1927, at 40 min. past 1 o'clock P. M. R. S. Zimmerman, Clerk, B. B. Hansen deputy Harry M. Ticknor, Nicholas W. Hacker, attorney for petitioner, Pasadena.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION
IN BANKRUPTCY 9569-J

In the Matter of	)	SPECIFICATIONS OF
LEWIS N. MERRITT,	)	OBJECTION TO DIS-
Bankrupt.	)	CHARGE OF BANKRUPT.

Comes now S. H. PETERS, a party in interest in the estate of the above named bankrupt and holding a provable claim against said bankrupt, and OBJECTS to granting the discharge of said bankrupt from his debts, and for the grounds of such opposition does file the following specifications, to wit:—

SPECIFICATION NO. I.

That the said bankrupt, Lewis N. Merritt, while a bankrupt, did wilfully, wrongfully, feloniously, unlawfully, knowingly and fraudulently conceal from his Trustee in bankruptcy certain valuable personal property belonging to his estate in bankruptcy consisting of one Packard automobile and one Nash roadster automobile of the value of \$3,200.00 or more, the registered title to which said automobiles stood in the name of the bankrupt at the time of his adjudication in bankruptcy, and which said automobiles were of the value of \$3,200.00

or more, with a balance due on the purchase price thereof of \$1,600.00; also a one-fourth interest of the said bankrupt in the following described paintings, towit:—

Four pictures painted by Taber,

Two pictures painted by DeLongpre, and

Two pictures painted by Knowles,

which said interest in said pictures was left to the bankrupt under the terms of the will of his Mother, Annette W. Merritt, and the exact value of which is to the Trustee at this time unknown.

That by reason of the premises, the bankrupt has committed one of the offences punishable by imprisonment, as specified in Section 29-B of the Bankruptcy Act of the United States, and by reason thereof should be denied his discharge.

SPECIFICATION NO. II.

That the said bankrupt Lewis N. Merritt on the 31st day of February 1927, before Clara E. Larison, a Notary Public within and for the County of Los Angeles and State of California, wilfully, unlawfully and feloniously, knowingly and fraudulently made a false oath in this bankruptcy proceeding, in that, having been duly sworn by the said Clara E. Larison, a Notary Public as aforesaid, to tell the truth regarding the facts contained in his schedules in bankruptcy, on said date did falsely, corruptly, knowingly, wilfully and contrary to said oath, verify a false statement in Schedule B-2-g of his bankruptcy schedules, in that the said bankrupt verified Schedule B-2-g as follows:—

“Carriages and other vehicles, viz: NONE.” WHEREAS, in truth and in fact, at the time of making said schedules said bankrupt had in his possession a certain

Packard automobile and a certain Nash roadster automobile of the value of \$3,200.00 on which the said bankrupt had paid the sum of \$1,600.00, and that the said bankrupt, at the time of so verifying said schedule B-2-g on his oath, well knew that the statement in his schedules that he had no carriages and other vehicles was false, and that said statement was at that time made with the intention to deceive and mislead his Trustee in bankruptcy, and that by reason of the premises the bankrupt has committed one of the acts punishable by imprisonment, as specified by Section 29-B of the Bankruptcy Act of the United States, and by reason thereof should be denied his discharge.

SPECIFICATION NO. III.

That said Lewis N. Merritt, while a bankrupt, on the 24th day of May 1927, before the Honorable James L. Irwin, one of the Referees in bankruptcy for the Southern District of California, and the Referee in charge of this proceeding, at the examination of said bankrupt, did then and there wilfully, unlawfully, feloniously, knowingly and fraudulently make a false oath, in that the said bankrupt, having been duly sworn by the said Honorable James L. Irwin, Referee in bankruptcy as aforesaid, to tell the truth, the whole truth and nothing but the truth, and under his oath to testify on said date, did falsely, corruptly, knowingly, feloniously and wilfully, and contrary to said oath, swear and depose before the said Referee, in response to the following questions, to-wit:—
“By Mr. Lewis.

Question: Have you any automobiles?

Answer: No.

Q. Does anybody hold title to any automobiles for you?

A. I am buying two automobiles on lease contract.

Q. Showing you a paper here—what has become of this automobile?

A. That is in the hands of the automobile agency.

Q. What automobile agency is it in the hands of?

A. Earl C. Lindley Motor Car Co.”

That such questions and answers just referred to are found in the transcript of the testimony taken on said examination, on page 34 thereof; that said answers made by the said bankrupt to all said questions were false, in that the said bankrupt did have two (2) automobiles at the time of so testifying, and that said automobiles were not in the hands of the Earl C. Lindley Motor Car Co., but were at that time in the possession of the bankrupt; and that, at the time of so swearing, the bankrupt did not believe said answers to be true; that said answers were made with the wilful intent to deceive and mislead the Trustee and creditors of said bankrupt as to material facts which the creditors had a right to inquire about; and that, by reason thereof, the bankrupt committed one of the acts punishable by imprisonment, as specified by Section 29-B of the Bankruptcy Act of the United States, and for that reason should be denied his discharge.

Your petitioner further alleges that the concealment of the property hereinbefore alleged and the false oaths committed by the said bankrupt in his bankruptcy proceeding were knowingly and fraudulently done by said bankrupt with intent to hinder, delay and defraud his creditors.

WHEREFORE, Your petitioner prays that the petition of the said bankrupt for his discharge in bankruptcy be DENIED.

DATED: At Los Angeles in the Southern District of California, this 23rd day of November, 1927.

S. H. Peters
Objecting Creditor.

W. T. Craig
Attorney for Objecting Creditor.

United States of America	} ss.
Southern District of California	
Southern Division	
County of Los Angeles	

S. H. Peters being duly sworn says: That he is Objecting creditor in the foregoing entitled matter; that he has read the foregoing Specifications of Objection to Discharge of Bankrupt and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes them to be true.

S. H. Peters

Subscribed and sworn to before me this day of November A. D. 1927

[Notarial Seal]

Olive Diffenderfer
Notary Public in and for the County
of Los Angeles, State of California

[Endorsed]: Original No. 9569-J In United States District Court Southern District of California Southern Division In the matter of Lewis N. Merritt Bankrupt Specifications of Objection to Discharge of Bankrupt Filed Nov. 28, 1927 at 50 min. past 2 o'clock P. M. R. S. Zimmerman clerk, B. B. Hansen deputy. W. T. Craig 817 Board of Trade Bldg. Los Angeles, California Attorney for Objecting Creditor

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA
SOUTHERN DIVISION

In the Matter of	)	In Bankruptcy
LEWIS N. MERRITT,)	
Bankrupt	)	No. 9569-J.

REPORT OF SPECIAL MASTER ON DISCHARGE

TO THE HONORABLE WILLIAM P. JAMES, ONE
OF THE JUDGES OF THE UNITED STATES
DISTRICT COURT:

I, the undersigned, James L. Irwin, one of the Referees in Bankruptcy for the County of Los Angeles, to whom by order of the court herein duly entered on the 5th day of December, 1927, Bankrupt's Petition for Discharge, and the Specifications of Objection of S. H. Peters, Objecting Creditor, of his grounds of opposition thereto, have been referred to find the facts and state the law and my recommendation, do hereby report as follows:

Upon receipt of the Order of Reference to me herein, and the pleadings and papers on file, and upon notice to the parties to appear and attend before me, said parties, to-wit, T. S. Tobin, Esq., appearing for the Objecting Creditor; Howard S. Lewis, Esq., appearing for the White Realty Company, a Creditor; and Nicholas W. Hacker, Esq., and Harry M. Ticknor, Esq., appearing for the Bankrupt; due hearing was had on the following

days, to-wit, December 29th and 30th, 1927, and testimony and other evidence were taken before me; whereupon I do find the following to be the facts, to-wit:

That the Bankrupt herein filed his schedules in bankruptcy and omitted therefrom two automobiles, which he held on lease contract; and also a one-fourth interest in four paintings which were bequeathed to him by the will of his mother, but which paintings were to remain in the possession of his father as long as the father lived, and the father of the said Bankrupt is still living and has possession of said paintings; that said paintings are of a problematical and sentimental value, and it is doubtful if the one-fourth interest of the Bankrupt in said paintings has any actual value.

That said automobiles were held under lease contract, and on different occasions, prior to the filing of the petition in bankruptcy, had been repossessed by the legal owner thereof, because the Bankrupt had not kept up his payments thereon; that shortly prior to the Bankruptcy the payments were delinquent and the cars were repossessed by the legal owner thereof; that the Bankrupt did not schedule his equity in said automobiles, acting upon the advice of his attorney; that at the first meeting of creditors, when asked concerning said automobiles, the Bankrupt stated the facts concerning them; and his then attorney asked leave to amend the schedules, which was granted; that the Trustee in Bankruptcy made no effort to get possession of said automobiles; that the legal owner retained possession of them and no demand was made upon him by the Trustee for the possession of them; that approximately a month subsequent to the first meeting of creditors, the legal owner

not having disposed of said automobiles, the Bankrupt borrowed sufficient money to pay the delinquent payments on said automobiles and was again given possession of them, which he retained some months, paying in all approximately One Thousand Dollars since having filed his Petition in Bankruptcy; that the Trustee then secured a turn-over order and obtained possession of the automobiles and finally disposed of them, realizing therefrom approximately the amount the Bankrupt had paid on them since filing his Petition in Bankruptcy, and since his last purchase of them.

I do therefore find that at the time of the filing of the Petition in Bankruptcy the Bankrupt's equities in said machines were of no value, and that his failure to schedule said machines, and his interest in said paintings, was upon the advice of his attorney, and not with the intent to delay and defraud his creditors.

I do therefore recommend that said Specifications be overruled, and that said Bankrupt's discharge be granted.

My fees and expenses on said reference are \$50.00 and disbursements \$82.00 for stenographic reporter and transcript.

I transmit to you herewith the following documents:

1. Specifications of Opposition to Discharge of Bankrupt.
2. Notice of Hearing.
3. Order of Reference.
4. Oath of Special Master.
- 4.a Summons and return.
5. Reporter's Transcript of Testimony.
6. Specifications of Objections.

7. Notice of Trial.

Dated this 30 day of Jan. 1928.

Respectfully submitted,

James L. Irwin,
Special Master.Filed Feb. 1 1927 at 45 Min. Past 4 o'Clock P. M.
R S Zimmerman, Clerk By B. B. Hansen, Deputy

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA SOUTHERN DIVISION
IN BANKRUPTCY 9569-J

In the Matter of) LEWIS N. MERRITT,) Bankrupt.))	EXCEPTIONS TO REPORT OF MASTER.
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TO THE HONORABLE WM. P. JAMES, JUDGE
OF THE ABOVE NAMED COURT:—

Comes now S. H. Peters, objecting creditor to the discharge of the bankrupt herein, and makes and files the following EXCEPTIONS to the findings of James L. Irwin, Esq., Special Master herein, made and entered on January 30th, 1928, for the reason that said findings are not justified by the evidence, are contrary to the evidence, and contrary to the law, and that the conclusions to be drawn therefrom are contrary to Section 14 and Section 29 of the Bankruptcy Act of the United States, and particularly to Section 14-B-7 thereof.

EXCEPTION I.

The objecting creditor EXCEPTS to the finding of the Master

“that said automobiles were held under lease contract and on different occasions prior to the filing of the petition in bankruptcy had been re-possessed by the legal owner thereof because the bankrupt had not kept up his payments thereon; that shortly prior to the bankruptcy the payments were delinquent and the cars were re-possessed by the legal owner thereof,”

for the reason that the testimony of the bankrupt himself shows that at the time of filing his petition in bankruptcy the bankrupt was in possession of said automobiles, and the testimony further shows that the payments on said automobiles were not at that time delinquent but, on the contrary, had been paid up to April 5th, 1927, towit: six days subsequent to the filing of the petition in bankruptcy.

EXCEPTION II.

The objecting creditor EXCEPTS to the finding of the Master

“that the bankrupt did not schedule his equity in said automobiles, acting upon the advice of his attorney,”

for the reason that the evidence offered by the bankrupt in support of his defense that he acted upon advice of his attorney was insufficient to justify said finding, for the reason that the bankrupt was unable to state any of the conversation between himself and the person whom he claimed was his attorney, and for the further reason that no showing was made that the bankrupt fully and fairly stated the facts to the person whom he claims was his attorney, and for the further reason that the attorney whom he claims he consulted was not an attorney in this proceeding and, so far as the objecting creditor knows, was not then an attorney of this Court.

EXCEPTION III.

The objecting creditor EXCEPTS to the finding of the Master

“that approximately a month subsequent to the first meeting of creditors, the legal owner not having disposed of said automobiles, the bankrupt borrowed sufficient money to pay the delinquent payments on said automobiles and was again given possession of them, which he retained some months, paying in all approximately \$1,000.00 since having filed his petition in bankruptcy;” for the reason that said finding does not include a finding of fact to the effect that in paying up said delinquent installments the bankrupt made use of a credit of over \$2,100.00 which he had paid on said automobiles prior to the filing of the petition in bankruptcy as a part of the purchase price of said automobiles.

EXCEPTION IV

The objecting creditor EXCEPTS to the finding of the Master which reads as follows:—

“I do therefore find that at the time of the filing of the petition in bankruptcy the bankrupt’s equities in said machines were of no value and that his failure to schedule said machines and his interest in said paintings was on the advice of his attorney and not with intent to delay and defraud his creditors,”

for the reason that the evidence conclusively shows, and is undisputed, that prior to the filing of his petition in bankruptcy herein the bankrupt had paid on said automobiles a sum of money in excess of \$2,100.00; that said sum was at all times subsequent thereto left to the credit of and for the benefit of said bankrupt, and at the time the bankrupt took possession of said automobiles after

the filing of his petition in bankruptcy, no new contract was made thereon and payments made subsequent to the filing of said petition in bankruptcy were credited onto and in addition to the sum of over \$2,100.00 which the bankrupt had paid on said automobiles prior to the filing of his petition herein.

The objecting creditor further EXCEPTS to said finding for the reason that the acts, conduct and attitude of the bankrupt in said transaction were not in good faith but clearly showed an intent to hinder and delay the Trustee in obtaining possession of said automobiles and to defraud him out of over \$2,150.00 which the bankrupt had theretofore paid on the purchase price thereof.

EXCEPTION V.

The objecting creditor EXCEPTS to said Findings as a whole, for the reason that the specifications of objection to the bankrupt's discharge contained, in addition to the concealment alleged, two charges of false swearing wherein the bankrupt was charged in Specification No. II with falsely swearing in his schedules that he had no carriages and other vehicles, and in Specification No. III with falsely swearing on his examination that he had no automobiles; whereas, in truth and in fact, at the time of filing his petition in bankruptcy he had two automobiles, and at the time of the examination, on which the charge of false swearing in Specification No. III was based, the bankrupt was at that time driving one of said automobiles; that this Fifth EXCEPTION is based on the fact that on the trial of the objections to discharge the objecting creditor proved conclusively that said false testimony was given by the bankrupt at the

times alleged in said Specifications, and that the Master has made no findings whatsoever relative to said false swearing.

WHEREFORE, the objecting creditor prays that the report of the Special Master be set aside and the bankrupt's discharge DENIED.

S. H. Peters
Objecting Creditor.

W. T. Craig
Attorney for Objecting Creditor.

United States of America	} ss.
Southern District of California	
Southern Division	
County of Los Angeles	

S. H. Peters being duly sworn says: That he is Objecting Creditor in the foregoing entitled matter; that he has read the foregoing Exceptions to Report of Referee and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes them to be true.

S. H. Peters

Subscribed and sworn to before me this 9th day of February A. D. 1928

[Notarial Seal]

Olive Diffenderfer

Notary Public in and for the County
of Los Angeles, State of California

[Endorsed]: Original No. 9569-J In United States District Court Southern District of California Southern Division In the matter of Lewis N Merritt Bankrupt Exceptions to Report of Referee Filed Feb. 10, 1928 at 25 min. past 2 o'clock P. M R. S. Zimmerman, clerk.

B. B. Hansen, deputy. W. T. Craig Board of Trade Building, Telephone TRinity 5531 Los Angeles, California Attorney for Objecting Creditor

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Before Hon. James L. Irwin, Special Master

In the Matter of)	
LEWIS N. MERRITT,	)	In Bankruptcy,
Bankrupt	)	No. 9569-J.

REPORTER'S TRANSCRIPT OF HEARING OBJECTIONS TO DISCHARGE, DECEMBER 29th AND 30th, 1927, BEFORE THE SPECIAL MASTER

BE IT REMEMBERED, That upon the hearing of the above entitled matter, before Hon. James L. Irwin, Special Master, 834 H. W. Hellman Building, Los Angeles, California, on the 29th and 30th days of December, 1927, there appeared T. S. TOBIN, ESQ., on behalf of W. T. CRAIG, ESQ., Attorney for the Objecting Creditor, HOWARD S. LEWIS, ESQ., for the W. H. White Realty Company; NICHOLAS W. HACKER, ESQ., and HARRY M. TICHNOR, ESQ., appearing for the Bankrupt; whereupon the following proceedings were had and testimony was adduced, to-wit:

(Testimony of Clara E. Larison—E. B. Bowman.)

CLARA E. LARISON,

a witness called on behalf of the Objecting Creditor, being duly sworn by the Special Master, testified as follows:

My name is Clara E. Larison. I am a Notary Public in the State of California, within and for the County of Los Angeles. I know the Bankrupt, Lewis N. Merritt, who subscribed and swore to the Petition and schedules filed herein before me on the 31st day of March, 1927.

E. B. BOWMAN,

witness for Objecting Creditor, testified: I am now and was on May 24th, 1927, and June 7th, 1927, respectively, Court Reporter for Honorable James L. Irwin, Referee in Bankruptcy. I attended as such Reporter an examination of Lewis N. Merritt held before the Referee in Bankruptcy on the 24th day of May, 1927, and also on the 7th day of June, 1927. Mr. T. S. Tobin appeared as attorney for the Trustees; Mr. Howard S. Lewis for the Creditor, and Nicholas W. Hacker for the Bankrupt. I took down the testimony of the Bankrupt as examined by Mr. Lewis, at each of these hearings. The carbon copies shown me are true and correct.

(Reporter's transcript of testimony of the Bankrupt had upon May 24th, 1927, offered for identification as Trustee's Exhibit No. 1, and so marked. A similar transcript of such examination held on June 7th, 1927, offered and marked Trustee's Exhibit No. 2, for identification.)

(Testimony of Earl C. Lindley.)

EARL C. LINDLEY,

witness produced on behalf of Objecting Creditor, testified:

I am President of the Lindley Motor Car Company, and acquainted with the Bankrupt, Lewis N. Merritt. On or about the 5th of October, 1926, I sold to Mr. Merritt one Nash Advanced Six Roadster, and a Packard seven-passenger Sedan. The down payment on the Packard car was one-third of the sales price or \$651.00. The monthly payments were \$81.38, commencing in November, 1926, and running for 18 months. The down payment on the Nash roadster was approximately one-third and the monthly payments were about the same on the Nash as on the Packard.

On May 24th, I am not sure as to the date, but these cars were in our warehouse, stored. They were re-possessed by Mr. Butler of our collection department. I think that he took them about the 15th to the 20th of April. They remained in our warehouse about a month. I am not able to say it was a month. The payments were brought up to date and the cars were turned back to Mr. Merritt. I cannot say whether they were turned back prior to the 24th of May, 1927, or not. The paper on these cars was sold to the Commercial Discount Company about a week after the sale, and they kept all the records.

Witness temporarily withdrawn.

(Testimony of Frank McDonald.)

FRANK McDONALD,

witness on behalf of Objecting Creditor, testified:

I am collector and adjustor for the Commercial Discount Company. We purchased two conditional sales contracts from the Lindley Motor Company of Pasadena in October, 1926, in which Lewis N. Merritt was the purchaser and Lindley Motor Company was the seller. I have no copy of the contracts with me. The original was in our office but when the contracts were paid up sometime ago they were turned over on receipt of the payments.

I have had dealings with Lewis N. Merritt during the past year. I believe we re-possessed two cars from him on two different times. One was a Nash roadster and the other was a Packard sedan. First time was in the latter part of May, somewhere between the 20th of May and the latter part of May, I cannot give the exact date.

I do not believe there is anybody at the Commercial Discount Company had anything to do with the contracts but myself and to the best of my recollection the car was repossessed sometime right after the 20th of May. When an account becomes delinquent there is a write-up made, that is, a statement, and the date put on when I repossessed the car. I have three dates here,—the first one is 5/16/27; I have no notation as to that date. The second is the 26th. To the best of my recollection it was between the 20th and the latter part of the month. I think it was the 26th and the Nash car was re-possessed on the same date. They were in the Lindley Motor Company warehouse when I repossessed

(Testimony of Earl C. Lindley.)

them. They were there a month before. I cannot say how long they remained there. I saw them there probably a week after that.

There was a bad check that came into my office from Mr. Merritt on those cars. It came into my office in April.

I again re-possessed these cars in October.

When they were delivered to the Trustee he paid up the balance due on the cars; how much I do not know.

EARL C. LINDLEY,

recalled:

The two automobiles were placed in my place of business in April, 1927, by Mr. Butler, our collector. They remained there a month, or maybe more and then one of them was delivered to Mr. Merritt's son and one to Mr. Merritt, the Bankrupt. They came back into the possession of the Earl Lindley Motor Company on the 13th of October. They were re-possessed for delinquent payments, either by Mr. McDonald or by Mr. Butler. As far as I know, from the latter part of May or around the first of June they were in the hands of Mr. Merritt until October 13th, and they were then turned over to the Trustee in Bankruptcy. I do not know the balance owing on them as I had nothing to do with the collections. In June they were turned back to Mr. Merritt as he paid up. At that time he was behind two payments,—those falling due on the 5th of April and the 5th of May.

(Testimony of Lewis N. Merritt.)

LEWIS N. MERRITT,

the Bankrupt, testified:

I remember being examined in this Court on May 24th by Mr. Lewis, representing certain creditors. I came down-town in a car. I am not sure what car.

Thereupon the Counsel for Objecting Creditor offered in evidence as a part of the case of the Objecting Creditor, a part of the transcript of the testimony of the Bankrupt, given May 24th, 1927, before the Referee, being part of Trustee's Exhibit No. 1:

"Q, BY MR. LEWIS: In fact, you know you didn't, don't you?

"A: No, I do not.

"Q: Have you any automobiles?

"A: No.

"Q: Does anybody hold title to any automobiles for you?

"A: I am buying two automobiles on lease contract.

"Q: Showing you a paper here; what has become of this automobile?

"A: That is in the hands of the automobile agency.

"Q: What automobile agency is it in the hands of?

"A: Earl C. Lindley Motor Car Company.

"Q: How much do you owe on it?

"A: About \$1600.

"Q: What kind of car is it?

"A: A Packard.

"Q: What did you pay for it?

"A: About \$3200.00.

"Q: Are you driving that car?

"A: I am.

(Testimony of Lewis N. Merritt.)

“Q: Have you got it with you today?”

“A: No.

“Q: Where is it?”

“A: In Pasadena.

“Q: What other automobiles have you?”

“A: I have a Nash Roadster—my son uses.

“Q: A Nash Roadster that your son uses?”

“A: Yes.

“Q: Where did you get that?”

“A: I bought that from Earl C. Lindley.”

“Q: Don’t you know how much you paid for the two cars?”

“A: No, not exactly.

“Q: Do you use them both?”

“A: No, I don’t use the Roadster at all.

“Q: Who uses the Roadster?”

“A: My son.

“Q: Who holds the two cars?”

“A: The Lindley Motor Car’ Company, or their assigns.

“Q: You have no interest in them at all?”

“A: I have no claim on them.

“Q: Who is the registered owner of those cars?”

“A: The Earl C. Lindley Motor Car Company.

“Q: Who is the legal owner?”

“A: I mean the legal owner.

“Q: Who is the registered owner?”

“A: I am.

“Q: You did not schedule those cars?”

“MR. HACKER: That is objected to, because it is covered by the amended schedules.

(Testimony of James E. Price—William H. Moore, Jr.)

“THE REFEREE: The objection is overruled.

“A: No.”

JAMES E. PRICE,

Called on behalf of Objecting Creditor, testified:

I am an adjustor for William H. Moore, Trustee in Bankruptcy, of the Estate of Lewis N. Merritt, Bankrupt.

I got two automobiles from the Earl Lindley Motor Co. during the month of December, 1927. One was a 1926 Nash Roadster and the other was a Packard sedan, 1926 model. I do not know in whose name they were registered. They were sold by the Trustee *by the Trustee* in his office at public auction. The Packard was worth from \$1200.00 to \$1500.00, and the Nash about \$900.00.

I brought them to a garage Mr. Moore designated, put them in there and had them wiped up.

WILLIAM H. MOORE, JR.,

Called as a witness on behalf of the Objecting Creditor, testified:

I am the Trustee in Bankruptcy in this matter and I filed Trustee's Petition and Order to Show Cause, dated October 5th, 1927, and October 26th, 1927, respectively, as follows:

TO THE HONORABLE JAMES L. IRWIN, REFEREE IN BANKRUPTCY:—

Comes now your petitioner, Wm. H. Moore, Jr., and respectfully shows the Referee:—

(Testimony of William H. Moore, Jr.)

I.

That the above named Bankrupt Lewis N. Merritt was adjudged a bankrupt in this court on the 31st day of March, 1927, and that your petitioner was elected Trustee in bankruptcy for the estate of the said Lewis N. Merritt, bankrupt, and at all times since has been and now is the duly qualified and acting Trustee in bankruptcy for said estate.

II.

That among the assets belonging to the estate of the bankrupt herein are certain valuable paintings, specifically set forth in paragraph four of the will of Annette W. Merritt, made, executed and published on May 5th, 1923, and filed for probate in the Superior Court of Los Angeles County, California, on July 11th, 1923, which said paintings consist of four (4) pictures painted by Taber, two (2) by DeLongpre, and two (2) by Knowles, and which said paintings were to be divided equally between the bankrupt herein and his brother Hulett C. Merritt and his sisters Bertha M. White and Evelyn M. Hanan.

III.

That the said bankrupt failed, neglected and refused to include said pictures in his schedules in bankruptcy and that his ownership of said pictures was developed at an examination of said bankrupt held before the Honorable James L. Irwin, Referee in bankruptcy, on May 24th, 1927, and June 7th, 1927.

IV.

That said bankrupt has failed, neglected and refused to turn over to your petitioner as Trustee in bankruptcy any of the pictures hereinbefore described, which said

(Testimony of William H. Moore, Jr.)

pictures your petitioner believes to constitute a valuable portion of the assets of the bankruptcy estate.

V.

That at the time of the filing of his petition in bankruptcy herein the said bankrupt Lewis N. Merritt was the owner of an equity in a certain Packard automobile of the value of \$3,200.00 on which there was a balance due of \$1,600.00; that he failed and neglected to include said automobile in his schedules in bankruptcy; that at the time of the examination of the said bankrupt on May 24th, 1927, he was driving said automobile and keeping it in Pasadena, California; that he was also the owner of a Nash roadster, the exact value of which is to your petitioner unknown; that the said bankrupt Lewis N. Merritt has failed, neglected and refused to surrender said automobiles to your petitioner as Trustee in bankruptcy for the purpose of realizing such sums as he might be able to do on the bankrupt's equity therein.

VI.

That your petitioner believes that it is to the best interests of the bankrupt estate that the bankrupt be required forthwith to turn over to the Trustee the property hereinbefore described to your petitioner as Trustee in bankruptcy, to be sold for the benefit of the bankrupt estate.

WM. H. MOORE, JR.

Trustee.

W. T. CRAIG

Attorney for Trustee

10-4-27.

(Testimony of William H. Moore, Jr.)

Verified October 5th, 1927; filed October 6th, 1927.
James L. Irwin, Referee.

ORDER TO SHOW CAUSE, as follows:

Upon reading and filing the verified petition of Wm. H. Moore, Jr., Trustee in bankruptcy for the above named estate, and it appearing to the Referee from said petition that said bankrupt Lewis N. Merritt is concealing certain personal property from his Trustee in bankruptcy, consisting of certain valuable paintings, specifically described in the petition of the Trustee in Bankruptcy herein, together with a Packard automobile and a Nash roadster automobile, and good cause appearing therefor, and the Referee being fully advised in the premises,

NOW THEREFORE, On motion of W. T. Craig, (Thomas S. Tobin of counsel) Attorney for the Trustee,

IT IS ORDERED That Lewis N. Merritt, the bankrupt herein, show cause herein before the undersigned Referee in bankruptcy at the Courtroom of the Honorable James L. Irwin, Referee in bankruptcy, in the H. W. Hellman Building in the City of Los Angeles, County of Los Angeles, and Southern District of California on the 14th day of October, 1927, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, why the prayer of the Trustee herein should not be granted and the bankrupt Lewis N. Merritt be required to turn over to Wm. H. Moore, Jr., as Trustee in bankruptcy herein the property described and set forth in the petition of the said Trustee herein.

(Testimony of William H. Moore, Jr.)

IT IS FURTHER ORDERED That a copy of this order and the petition upon which the same is based be served upon the bankrupt Lewis N. Merritt at least five (5) days prior to the hearing hereon.

DONE at Los Angeles in the Southern District of California, this 6th day of October, 1927.

EARL E. MOSS

Referee in Bankruptcy.

Service of the within order is hereby admitted this 8th day of October, 1927.

(Signed)

N. W. HACKER

H. M. TICHNOR

Attorneys for Bankrupt.

Filed October 18th, 1927.

JAMES L. IRWIN, Referee.

MR. LEWIS: If the Court please, Mr. Lindley desires to be excused, if he is not needed further.

THE SPECIAL MASTER: There are just one or two questions that I would like to ask him before he goes. It will not be necessary for him to resume the stand. Mr. Lindley, at the time you took possession of these automobiles a short time prior to the filing of the petition in bankruptcy in this case, was there any conversation between you and Mr. Merritt, the Bankrupt, about the turning over or of turning them back to him after the bankruptcy discharge was granted to him.

A: I can't recall anything.

Q: In other words, did you re-possess these automobiles without any understanding as to how you were

(Testimony of William H. Moore, Jr.)

to use them, or without any conversation with him as to how you were to use them?

A: Yes, we did.

Q: And if a purchaser had come along the next day, you would have sold them to him?

A. Yes sir, in the case of either car.

THE SPECIAL MASTER: That is all. Do you gentlemen want to ask him anything further?

MR. TOBIN: No.

MR. HACKER: No.

Thereupon counsel for Objecting Creditor offered in evidence Order to Convey Assets to the Trustee, which is as follows:

Wm. H. Moore, Jr., The Trustee herein, having made an application to compel Lewis N. Merritt to turn over to his said Trustee certain paintings bequeathed to said bankrupt in the will of his mother, Annette W. Merritt, deceased, also a Packard automobile and a Nash roadster, and an Order to Show Cause having been set for hearing before the undersigned Referee in Bankruptcy at the court-room of the Honorable James L. Irwin in the H. W. Hellman Building in the City of Los Angeles, County of Los Angeles, Southern District of California, on the 14th day of October, 1927, at the hour of 10:00 o'clock A. M., and having been continued to the 18th day of October, 1927, at the hour of 2:00 P. M., and the Trustee appearing by W. T. Craig (Thomas S. Tobin of counsel) his attorney, and the bankrupt appearing in person and by his attorney, N. W. Hacker, and testimony having been taken at said hearing, and it appearing to the Court from the testimony taken at said hear-

ing that sometime prior to the filing of the Petition in Bankruptcy that said bankrupt had purchased a Packard automobile for the agreed price of Three Thousand Two Hundred (\$3200.00) Dollars, and a Nash roadster automobile, the value of which is unknown, from Earl Lindley Motor Co., of Pasadena, California, which said automobiles were not included by said bankrupt in his schedules in bankruptcy at the time of the filing of the same. That at the first meeting of the creditors informal application was made by the bankrupt through his attorney to amend his schedules to include said automobiles, with the statement that the same had been re-possessioned by the Earl Lindley Motor Co. That thereafter an order was duly entered herein by the Honorable James L. Irwin, permitting the said bankrupt's schedules to be amended to include said automobiles. That on or about the first day of July, 1927, said bankrupt reacquired possession of said automobiles and made payments on account of the purchase price thereof to said Earl Lindley Motor Co., and that later, on or about the 8th day of October, 1927, said bankrupt being in default with said Earl Lindley Motor Co., the said Earl Lindley Motor Co. again re-possessioned said automobiles, and still retains possession thereof, that said automobiles are out of the possession of said bankrupt.

It appearing to the Referee that under the terms of the will of Annette W. Merritt the bankrupt is entitled to one-fourth of the following described paintings:

- Four pictures painted by Tabor,
- Two pictures painted by DeLongpre, and
- Two pictures painted by Knowles.

Under the terms of said will the four children of said Annette W. Merritt were entitled to select in the order of their ages from said eight paintings, and that said bankrupt has third choice thereof, but that said choice could not be made, nor any possession of said paintings be taken until after the death of the father of the bankrupt Lewis J. Merritt, who is still living. That the trustee is entitled to the interest of said bankrupt in said property.

NOW THEREFORE, on Motion of W. T. Craig, attorney for the trustee in Bankruptcy (Thomas S. Tobin of Counsel) it is ordered that said Lewis N. Merritt, bankrupt herein, forthwith convey to Wm. H. Moore, Jr., as Trustee in bankruptcy herein, all of his right, title and interest in and to one Packard automobile and one Nash roadster automobile, the same being now in the possession of Earl Lindley Motor Co. of Pasadena, California, and all of his right, title and interest in and to the paintings hereinbefore described.

Done at Los Angeles, in the Southern District of California this 17th day of November, 1927.

EARL E. MOSS

Referee.

THE SPECIAL MASTER: Is the question of these automobiles the only objection to the discharge?

MR. TOBIN: That and the perjury, and the concealment of the fact that he had a one-fourth interest in some paintings that were left him in his mother's will.

THE SPECIAL MASTER: The question of value at the time the automobiles were sold is not material, be-

cause there were some payments made during the time he was in possession of them.

MR. HACKER: That is true. The value of them at the time of the filing of the petition in bankruptcy is material, and there were some payments made in the meantime.

MR. TOBIN: Yes.

THE SPECIAL MASTER: And the material question is what equity did the bankrupt have in the automobiles at the time of the filing of the petition in bankruptcy.

MR. TOBIN: There would be a continuing concealment.

MR. HACKER: No, not after the bankruptcy schedules were filed.

MR. TOBIN: It is the duty of the bankrupt to turn over to his Trustee all the property in his possession; but by deceiving the Trustee and keeping them and driving them, and having them in his possession, instead of turning them over to his Trustee, he has committed an offense against the Bankruptcy Act, and it is a continuing concealment.

THE SPECIAL MASTER: I am trying to indicate what the Court thinks is material. I am afraid we are wasting time. The value of the automobiles is material, and also any agreement he might have had with Mr. Lindley whereby he was to later come into possession of the automobiles would be a material and proper issue.

(Testimony of William H. Moore, Jr.)

Witness resuming:

I obtained possession of the two automobiles,—one was a Packard sedan and the other was a Nash roadster, and disposed of them. I sold the Packard for \$1250.00 and the Nash roadster for \$800.00.

CROSS EXAMINATION:

I was elected Trustee on the 27th day of April, which was the first meeting of the creditors. I employed W. T. Craig as counsel. I have not been in Court in this matter, personally, until today.

I heard that a question was raised with respect to these two automobiles and that a motion was made by the Bankrupt's attorney for leave to amend the schedules to include them in the schedules, but do not remember whether that was at the first meeting or at an adjourned meeting, nor do I know whether it was before the Bankrupt was examined or offered for examination.

I knew of the existence of these automobiles either through Mr. Tobin or one of Mr. Craig's assistants telling me that the matter had resulted in a discovery of the automobiles that were not scheduled, but there was nothing for me to do, because they had been repossessed by the seller. I took no action to find out whether that was true or not until October because I did not know that Mr. Merritt had them in the meantime. I made no investigation as to whether he had or not. I relied on my attorney's statement. I did not read the transcript of the testimony. I got information from my attorney. My information was that they were not in the possession of the bankrupt nor in the hands of the financing company, but had been turned over after he

(Testimony of William H. Moore, Jr.)

had been ordered in for examination. It was my understanding they had been re-possessed after the filing of the petition, but I took no steps to obtain possession or assert any rights as Trustee until October of this year.

I did not see the answer filed by Mr. Merritt in response to the Order to Show Cause why these cars should not be turned over. It was never served upon me.

I have seen the Amended Schedule B-4, signed by Mr. M. Merritt, and I think I received a copy of it. These referred to the paintings. This is the last amendment. I have not received possession of those yet.

MR. TOBIN: Why not?

MR. LEWIS: I am attorney for the estate of Annette W. Merritt, and those pictures are to remain in the house there until the death of the husband, and then the oldest child is to have first choice and then in the order of their ages; and her will also provides that those paintings cannot be removed in any instance.

WITNESS resuming:

I knew that the Amended Schedule A-2 under date of May 3rd, 1927, had been filed.

Q: Then, from the 3rd day of May, 1927, down to the middle of October, about the 13th day of October, 1927, or somewhere in that vicinity, you took no steps to ascertain any rights with respect to those two automobiles?

MR. TOBIN: From whom?

MR. HACKER: Against anybody.

MR. TOBIN: I object to that question. I think the schedule contains a sworn statement of the fact that those cars had been repossessed and were out of his

(Testimony of William H. Moore, Jr.)

hands. My objection is made on the ground it is immaterial.

THE SPECIAL MASTER: The objection is overruled. It might indicate that they were of no value, in his judgment.

(The Reporter read the question, by request, as follows: "Q: Then, from the 3rd day of May, 1927, down to the middle of October, about the 13th day of October, 1927, or somewhere in that vicinity, you took no steps to ascertain any rights with respect to those two automobiles?")

A: Yes, I asked Mr. Tobin to get them, and find out what equity there was in them, if any.

Q. BY MR. HACKER: When did you do that?

A. As soon as I heard about it.

Q. Early in May?

A. I think so.

Q. He did not come back to you with any information about it, or ask you to sign any petition, until in October, 1927, about the middle of October, 1927?

A. I think so.

Q. You are familiar with automobile contracts, under which automobiles are sold in this section of the country?

A. Yes sir.

Q. And you have the very contracts under which these automobiles were sold?

A. Yes sir.

Q. You got those at the time you paid the Discount Corporation whatever was due on the cars, did you not?

A. Yes, this last week.

Q. This last week?

(Testimony of William H. Moore, Jr.)

A. Yes sir.

Q. And you know that the title to cars sold under conditional sales contracts remains in the vendor, do you not?

MR. TOBIN: I object, unless it can be shown that the Discount Corporation has maintained the legal and the registered title, there being two forms of title.

THE SPECIAL MASTER: The objection is overruled.

A. Yes, I am familiar with the general form of those contracts, and the title would be reserved until the last dollar was paid.

Q. BY MR. HACKER: Exactly; and you knew that if you, as Trustee, would go to the people that repossessed those cars, that you might obtain the equity, did you not, that might possibly have vested in the bankrupt?

A. Not after repossession.

Q. Well, you did do that, did you not, in this very case, in October?

A. Well, that was because we understood, or I was advised by my attorney that the repossession was not in good faith, but was in conjunction with the bankrupt to conceal them.

I got the cars from Earl Lindley in Pasadena, and paid the money to the Discount Corporation who held the contracts. They gave me the receipted contracts and the Certificates of Registration and I already had the cars.

I did not see the answer of Mr. Merritt with respect to those pictures referred to in the Amended

(Testimony of William H. Moore, Jr.)

Schedule. The only information I had with respect to the terms of the will was from the schedule itself.

MR. HACKER: I want to read the fourth paragraph of the will of Annette W. Merritt. (Reading):

“Fourth: It is my desire that my four (4) pictures, painted by Tabor, and two (2) by DeLongpre and two (2) by Knowles, shall be divided equally among my four (4) children as they may agree, or in case they do not agree, they shall have their choice in the order of their ages, the oldest first, etc; they shall also divide among themselves my personal effects, furniture, jewelry, clothing, books and pictures and other items as they may agree, or if they cannot agree, they shall have their choice in each class as mentioned, in accordance to their ages, the oldest first, etc; provided, however, that all the foregoing items of personal property shall remain in the dwelling house during the lifetime of my husband, unless he shall otherwise direct,”

I received a conveyance of the automobiles and the pictures from Mr. Merritt, dated December 3rd, 1927.

MR. TOBIN: I desire to offer in evidence all of the files and records in this Court, in this matter, for information in the proceeding.

MR. HACKER: All the records in the file is too big an omnibus offer, and is not competent. This is a special proceeding, and the only thing that is competent is those that go to sustain the question.

MR. TOBIN: No, it is not a special proceeding.

THE SPECIAL MASTER: Yes, I think it is. The objection will be overruled.

MR. TOBIN: The Objecting Creditor rests.

“EVIDENCE OFFERED ON BEHALF OF
BANKRUPT.”

MR. HACKER: I desire to offer in evidence, in the transcript of the proceedings of May 24th, 1927, which is the Objecting Creditor's Exhibit No. "1" for Identification, and read from line 24, on page 2—(Interrupted).

MR. TOBIN: That will be objected to on the ground that it is irrelevant, incompetent, and immaterial, and is a self-serving declaration on the part of the Bankrupt, and is not the best evidence, the Bankrupt being present in Court at this time. It might be competent to be offered as an admission against interest on our part, but it is incompetent and immaterial for them to offer it as evidence on their own behalf.

THE SPECIAL MASTER: What is the testimony you propose to offer, and your purpose in offering it?

MR. HACKER: Here it is (exhibiting transcript to the Special Master), and the purpose is this: That before the Bankrupt was examined at all, and at the first meeting of creditors I asked leave to amend the schedules to include these two automobiles, and that matter was tacitly agreed to, and there was no objection to it at that time. I inadvertantly let it ride along before filing the amended petition and schedules, and the files now being in evidence, it shows that the matter was allowed to ride along before the same were filed, and the only purpose of this is to show that before anything had been done except to call a first meeting of the creditors the Bankrupt, through his attorney, discovering an error, or for any reason whatever, asked leave to amend the schedules to disclose the fact that he had these two automobiles.

THE SPECIAL MASTER: The objection is overruled.

MR. TOBIN: Is it the testimony of May 24, 1927?

MR. HACKER: Yes.

MR. TOBIN: I will object to it as being immaterial, irrelevant, and on the further ground that the offer of amendment was made two weeks afterwards.

THE SPECIAL MASTER: It might tend to show good faith after he learned the estate owned the automobiles.

MR. HACKER: I will read, beginning at line 24, page 2 of this transcript of May 24th, 1927, down to and including line 3 on page 3. (Reading):

“MR. HACKER: At the first meeting and examination of the Bankrupt here I asked leave to file amended schedules, and the matter was continued; and on the 18th of May I was in court here, and I arranged with Mr. Craig’s office for a continuance for that purpose, and now I am going to ask to file the amended schedules.”

MR TOBIN: I will ask to read the objection, and the ruling of the Court also, on that.

(The portion offered by Mr. Tobin, and to which he directed the attention of the Special Master, is as follows:)

“MR. TOBIN: We object to any ruling being made by the Court on that point until after the examination of this bankrupt. I don’t think the amendment is made in good faith. It is the opinion of the Trustee and also the opinion of certain creditors that this man has undertaken to deliberately deceive certain creditors and conceal property and assets, and that nobody would take any interest in it. It is one of the most bad-faith

(Testimony of Lewis N. Merritt.)

bankruptcies I have ever dealt with, and we object to the filing of the amended schedules, and ask the Court to defer its ruling until after the examination of this bankrupt.

LEWIS N. MERRITT,

Called on his own behalf, testified:

The first time I came before the Referee in response to an Order for my examination was the 3rd day of May, 1927. I later filed, as of the 3rd day of May, the Amended Schedule A-2 showing the cars. It was at my examination before the Referee on the 7th of June that the question of the paintings involved in the fourth clause of my mother's will was brought to my attention. They were not scheduled in my original schedules. I knew nothing about them. I never had any knowledge that they belonged to me, or would ever belong to me, or which ones. I didn't know anything about it, because I never even read the will. I have since transferred to the Trustee whatever interest the Will gives me.

The Order to Show Cause issued by Referee Moss on the 7th day of October, 1927, was never served upon me. The first intimation I had of it was from my counsel, and I filed in the Referees' office on the 14th of October my reply to that Order, which is as follows:

Now comes the Bankrupt, Lewis N. Merritt, and in response to the Order to Show Cause herein why he should not be required to turn over to Wm. H. Moore, Jr., as Trustee in Bankruptcy herein, certain auto-

(Testimony of Lewis N. Merritt.)

mobiles, pictures and other property as set forth in the Petition of Wm. H. Moore, Trustee, sworn to October 5th, 1927, and shows to the Court as follows:

I.

That said automobiles were inadvertantly omitted from his petition, but that prior to any examination of him before said Referee, his attorneys moved for leave to amend his Petition by including said automobiles therein; and that on the day of June, 1927, an order was duly entered by said Referee allowing said amendment and schedule A-2 of respondent's Petition was amended to include said automobiles, reference to said Schedule A-2 now on file in this Court, is hereby made and respondent asks that the same be considered as if fully incorporated herein; that said automobiles were re-possessed by the legal owner thereof and subsequently re-purchased by respondent; that respondent has failed to keep up his payments thereon and that they have again been re-possessed by the legal owner thereof.

Respondent hereby offers to transfer, assign and convey to the Trustee herein, in any way that he legally can, any right, if any he has, to said automobiles.

II.

That at the time of the filing of his original petition herein, there had been no selection of the pictures and other property referred to in the Fourth clause of the Will of Annette W. Merritt, deceased; and that his father, Lewis J. Merritt, was then and still is occupying the homestead and enjoying the benefit of all of said property named in said Fourth clause; that his interest in said property was of so little value, if of any value,

(Testimony of Lewis N. Merritt.)

that it was entirely overlooked; that the failure to schedule same was wholly inadvertant without any thought of concealing the same from the creditors or this Court; that he has prepared and is ready to file herewith, a Petition addressed to the Honorable Referee for leave to Amend his original Petition by including a description of the property covered by the Fourth clause of the will of Annette W. Merritt, deceased, and is ready and willing and hereby offers to surrender to said Trustee all of his right, title and interest in said last named property, and upon complying with whatever order the Honorable Referee may make herein, asks to have the Order to Show Cause hereinbefore referred to, discharged.

LEWIS N. MERRITT

Petitioner

Verified October 14th, 1927. Filed in the office of James L. Irwin, Referee, October 14th, 1927.

I was examined before the Referee subsequent to the filing of this reply and appeared as a witness.

MR. TOBIN: I make the same objection. There is a record of that whole proceeding.

MR. HACKER: There is no transcript of those proceedings, no transcript has been made up, and if Mr. Bowman has his note book showing that, I would be glad to have it.

MR. TOBIN: That turnover order recites it.

MR. HACKER: All right, what happened at that hearing is just as important.

THE SPECIAL MASTER: That document you have just read is sufficient indication of his willingness

(Testimony of Lewis N. Merritt.)

to turn over any right he has; it indicates his good faith. What this Court is particularly interested in is that transaction about his having the automobiles, about his getting them back; as to whether there was any understanding as to whether or not he would get them back.

MR. TOBIN: I realize that the question of the pictures is not important.

THE SPECIAL MASTER: No; and the fact that he has not schedules the automobiles in the schedules might be explained, if there was no agreement whereby he was to get them back from the Lindley Company after the schedules had been filed.

Q: BY MR. HACKER: Well, Mr. Merritt, was there any agreement or understanding between you and the Earl C. Lindley Motor Company that after these schedules were filed and you had been adjudicated a bankrupt, that you would get these cars back?

MR. TOBIN: That question is objected to on the ground that it is calling for a conclusion of the witness, and not a statement of facts.

THE SPECIAL MASTER: Yes, sustained, on the ground it is calling for a conclusion.

Q: BY THE SPECIAL MASTER: Why did you turn these automobiles back to the Company?

A. I could not keep the payments up.

Q. How long prior to your filing the petition in bankruptcy and your schedules here were they turned back?

A. I have tried to find those records, but nobody seems to be able to locate them.

Q. About how long prior?

(Testimony of Lewis N. Merritt.)

A. I had delivered the cars on four different occasions, at the request of Mr. McDonald, because I could not make the payments when they came due, and I would deliver them to Lindley and leave them there until I could make the payments, and I can't state unless I could find the records showing those payments, what the dates were. When I would get the money I would go and pay up on the cars and take them and use them, and that not only happened once, but it happened four times; but only twice, I think did they really serve papers on me.

Q. Were you contemplating filing a petition in bankruptcy when you delivered them the last time?

A. No sir.

Q. And you can't approximate the length of time prior to the filing of your petition here it was that you delivered the cars?

A. No sir.

Q. Whether it was the day before, a week before, a month before, or how long?

A. No, I couldn't. I wish I could find some records, but I have none myself. I tried to look over Mr. McDonald's records to see when I made the back payments. That would be the only way I would know.

Q. How long were they in his possession before you got possession of them again?

A. I was back two or three months on each car.

Q. But how long did he keep possession of them this last time before you got possession of them again?

A. Which time do you mean?

(Testimony of Lewis N. Merritt.)

Q. Just prior to the filing of your petition in bankruptcy, when you were up here, you had just delivered them to him, and how long did they remain in his possession?

A. About two weeks.

Q. You were permitted to use some other machine during this time?

A. My father had two cars.

Q. Were you or not using a car of the Lindley Motor Company?

A. No. Mr. Lindley loaned me a Paige at one time; and he also let my son use the Nash at one time.

Q. That is hardly customary for automobile people to do that. How did he happen to do that with you; can you explain that?

A. Well, he did not do it with me, but I think he thought a good deal of the boy; in fact, he explained to me and said the boy felt bad about losing the car, and that he let him have it.

Q. For how long a time did he let him have it?

A. Just a day at a time. He returned it there every evening, I think.

Q. The boy returned the car there every evening?

A. I think so.

Q. And he sometimes let you use the Paige during that time?

A. On one occasion Mr. McDonald let me take the Paige, and I afterwards bought the Paige.

Q. He let you use the Paige, and did he let you use any other car during the times he had the two cars pending these bankruptcy proceedings?

(Testimony of Lewis N. Merritt.)

A. No sir.

Q. What conversation took place between you and Mr. Lindley when you delivered these cars to him just prior to the filing of the bankruptcy petition?

A. Mr. McDonald had been calling me and kept calling me on the telephone and saying that I was in arrears, and he asked me—in fact, he suggested what was I going to do about it, and I went in and saw Mr. Lindley and told him about Mr. McDonald calling me, and I said, “I can’t make the payments, and I will leave the cars here.”

Q. You had no conversation with him about taking them back at some other time?

A. Absolutely none.

Q. How did you know he still had possession of them when you went after them the second time? Did you go to see him in the meantime?

A. Mr. McDonald came to collect on them just the same, whether I had the cars or not.

Q. You did not intend to turn them back permanently, but you only intended to turn them back until you could make the payments on them? That is, in order that you could keep up the payments?

A. I don’t understand the question.

A. Mr. McDonald came to collect on them just the

Q. Did you just intend to turn them back until you could make the back payments up?

A. Well, I didn’t know how that could be handled. I understood afterwards that it would be all right for me to make the payments. In fact, they demanded the payments of me.

(Testimony of Lewis N. Merritt.)

Q. You did not intend, then, to take them up again if you could make the payments?

A. No sir. I thought Mr. Moore would take possession of them.

Q. By the way, what was the reason you did not schedule the cars in the petition in the first place?

A. I was advised that I had no equity in them.

Q. Who advised you that?

A. Mr. Morris.

Q. Was he your attorney at that time?

A. Yes sir.

THE SPECIAL MASTER: Is Mr. Morris present here?

MR. HACKER: No.

Q. BY THE SPECIAL MASTER: If you intended to keep up your payments and get possession of them, did you not consider that you had some equity in them, then?

A. At the time there was so much owing on them that I didn't consider that I had any equity in them, and Mr. Morris and I discussed that. Of course, after I had made payments there was an equity in them.

Q. How much was the payments you made when you repossessed them after bankruptcy? How much did you pay in then?

A. From the time of my filing in bankruptcy until the time I had to give them up again, it was about \$1,000.

Q. On the two cars?

A. Yes, sir.

THE SPECIAL MASTER: That is all.

(Testimony of Lewis N. Merritt.)

MR. HACKER: I have no further questions at the present time.

CROSS EXAMINATION:

I borrowed some money from the First Trust and Savings Bank to make these payments. I had an income of about \$350.00 a month. I had a gross income of \$500.00 a month and got \$75.00 a month from the rent of a house but it cost more than that for taxes and maintenance. I did not schedule that \$75.00 a month rent from the house. My income of \$575.00 per month came from my mother's estate and I have been receiving it right along. It did not go into making up those back payments.

Question: I believe you testified on your direct examination that you re-purchased these cars from the Earl C. Lindley Motor Company; what was the re-purchase price?

Answer: Well, I said at the time that I did not know whether you would call it a re-purchase or not. I went and made a deal with Mr. McDonald on it.

Mr. McDonald told me that if I could make the payments, there would be no objection to my taking the cars. I do not know when that was. There was two months due then. I don't know that it was two months after I had gone into bankruptcy. I was not driving the car.

I remember Mr. Lewis examining me in Court relative to these automobiles on May 24th. Mr. Lewis asked me "Have you any automobiles" and the kind of car it was,—is that a Packard you are purchasing, and I answered, "Yes sir". and that I had paid about \$3200.00

(Testimony of Lewis N. Merritt.)

for it. And he asked me if I was driving that car and I said that I am. I meant just what I said when I made that statement.

Question: Then you were driving that car on May 24th 1927, the date of the examination by Mr. Lewis in this Court, were you not?

Answer: I am not sure about that.

Question: Well, the next question and answer on page 7 is like this.

He asked me:

“Q. Have you got it with you today?”

“A. No.

“Q: Where is it?”

“A: In Pasadena.

“Q: What did you mean by that?”

“A: I suppose I meant it was in Pasadena instead of being here.”

Q: Is it not a fact that car was repossessed two days after that examination?

A. I delivered the car rather than have the notoriety and publicity. I told Mr. McDonald that I will take it down there because I cannot give you a check. When I said on June 7th, 1927, that the Earl Lindley Motor Company replevied these cars, I meant put them in the warehouse and put a yellow tag on them.

I went down there and surrendered those cars before I filed my petition in bankruptcy at the instance of Mr. McDonald, because he said if I didn't do so, he would come and get them.

On four different occasions I have had to give them up, I could not tell with respect to the time I filed my

(Testimony of Lewis N. Merritt.)

petition in bankruptcy unless I got some of the papers showing some of the back payments that I made.

At the time I verified these schedules I had a conversation with my attorney relative to the automobiles. I do not remember just what I said to him. He said that I had no equity in them and that they did not belong to me. I do not know that my defense is that I made a full and fair disclosure to my attorney. I don't remember what he said. He simply said that they didn't belong to me; that I had no right to schedule them. I told him that I wanted to turn in everything I had and that I had these on sales contracts. I did not tell him where they were. When we drew up the schedules I didn't know myself where they were. I told him the truth about them and I don't know now, at that date, what it was.

The schedules were amended subsequently on the advice of Mr. Hacker. At the time the original schedules were drawn I don't doubt that I had them in my possession. I did not, after drawing and swearing to my schedules, turn these automobiles back to Earl C. Lindley Motor Co. They asked for them and I delivered them to them because I could not make the payments. During the time they were in their possession I did not use them with the possible exception of the Packard, once.

Question: What did you mean by your answer on page 7 under date of May 24, 1927, when you were asked the question

'Question—Are you driving that car?

Answer—I am.'

Question: What did you mean by your answer to that question?

(Testimony of Lewis N. Merritt.)

Answer: What date was that?

Question: May 24, 1927, the second meeting here.

Answer: If I could get the record I could tell, and I don't see why the Commercial Discount Company don't have it, because it would show exactly.

Question: Here is the transcript of your answer as to that, on May 24, 1927, and you knew at that time, the time you gave that testimony, whether or not you had possession of that car.

Answer: I presume I did.

Question: What did you mean by saying that you were driving that car at that time, May 24, 1927?

Answer: I don't know. I don't know, - - - don't remember what I testified.

Question: As a matter of fact that car was in your garage in Pasadena on that date, was it not?

Answer: I don't know. I can't tell.

Question: What did you mean when you said it was in Pasadena ?

Answer: I meant it was in Pasadena.

Question: Whereabouts in Pasadena?

Answer: I don't know.

Question: What did you mean by answering this question this way:

'Question: What other automobiles have you?

Answer: I have a Nash roadster my son uses.

Question: A Nash roadster that your son uses?

Answer: Yes.

Question: Where did you get that?

Answer: I bought that from Earl C. Lindley.'

Question: Do you remember that testimony?

(Testimony of Lewis N. Merritt.)

Answer: Yes sir.

THE SPECIAL MASTER: Might it be stipulated how much was due on these automobiles, or how much was paid by Mr. Moore to the Finance Company?

MR. LEWIS: Yes, I know that Mr. Moore paid \$1100, and the two cars brought \$2,050.00.

THE SPECIAL MASTER: The Trustee had an equity of how much?

MR. TOBIN: About \$900.

THE SPECIAL MASTER: And Mr. Merritt paid how much during the interim after bankruptcy?

THE WITNESS: About \$1,000.

THE SPECIAL MASTER: Is there any question about that?

MR. TOBIN: Those figures are correct, but those cars were held there and they depreciated, and at the time of the bankruptcy they would have brought a higher price.

MR. HACKER: The wholesale value of them—(Interrupted).

MR. TOBIN: That is immaterial. The fact remains that he had the registered title and was driving them, and if his equity had only been \$25 it was his duty to turn them in to the Trustee and let the Trustee get whatever he could for them.

THE SPECIAL MASTER: To be perfectly frank with you, if a motion had been made for dismissal, on the ground that you had not proven your case, it would probably have been granted. The fact that a man fails to schedule two automobiles, the title to which it might take quite a skilled lawyer to decide, or whether he really

(Testimony of Lewis N. Merritt.)

had any equity in the cars, is probably not sufficient ground to deny the discharge. The chances are that if he had scheduled them the Trustee would have taken possession and there would have been a petition in reclamation filed here for them. A great many lawyers might have advised the bankrupt not to schedule them. This is not such a concealment of assets as would be sufficient grounds for the denial of a discharge, as I see it at this time. Of course, the pictures, there is no question about those. A most vigorous examination was made by the attorney for the Estate who probated the will; he made a vigorous cross-examination of the gentleman (indicating the Bankrupt), and he knew the facts about those pictures, and there has been no reason shown for concealing the facts concerning the pictures. The only question is as to the automobiles.

MR. TOBIN: The fact remains that he had an original investment of \$1200 in the automobiles.

THE SPECIAL MASTER: If you could prove that there was any agreement between the Bankrupt and the Lindley Motor Car Company that they were to hold them, it would be different. A bankrupt does not schedule property that is not in his name.

MR. TOBIN: He had an equity and a property right in them.

THE SPECIAL MASTER: That is the question to be determined.

MR. TOBIN: I would like to go ahead and make my record complete. They have failed to make their motion on time.

THE SPECIAL MASTER: Proceed.

(Testimony of Lewis N. Merritt.)

Question: (By Mr. Tobin) Now, at the time you gave that testimony, you knew where that car was?

Answer: Yes.

Question: Where was it?

Answer: I knew where it was, but unless I could know the date I couldn't tell you.

Question: I mean as of May 24, 1927.

Answer: What did I say there?

Question: You said it was in Pasadena.

(No further response by the witness.)

Question: Your son was using the Nash all the time?

Answer: No, sir.

Question: Then what did you mean by this question and answer:

'Question—What other automobiles have you?

Answer—I have a Nash roadster—my son uses.'

Question: What did you mean by that?

Answer: I meant I had bought it for the use of my son.

Question: And your son was using it at that time?

Answer: I don't know that. I couldn't tell you unless—there must be some record that somebody can get that will show the exact dates those cars were in my possession and the exact dates they were not in my possession. (ADJournment on motion of Master.)

My occupation is a traveling salesman. I was not working as a traveling salesman at the time I filed my petition in bankruptcy.

I am acting as guardian of the person of my father, and live there with him most of the time. At the time I went into bankruptcy I was not paying any house rent.

(Testimony of Lewis N. Merritt.)

Yes, I had a gross income of \$575.00 per month. I was unable to pay the two \$80.00 payments on the automobiles out of an income of \$575.00 per month.

I cannot tell you what ones of the payments were made on the Nash prior to the filing of my petition in bankruptcy. I had made the January payment and subsequent payments, including February, but I am not sure about the March payment. I had paid about \$1000 on the car at the time of the filing of the petition. I also paid the November, December, January and February payments on the Packard car and I had more than \$1000.00 invested in that car, or a total of \$2000.00 in both cars at the time I made the schedules. I don't exactly remember this morning what I told my attorney at the time I consulted him regarding the leaving of these contracts out of my schedules. I made these payments on the cars by check but I have not the cancelled checks because I don't think I kept them.

I cannot tell when was the first time that I returned these automobiles to Earl C. Lindley. I know that there were four different times. The first time was before the first of April, 1927, and the cars were left there for several weeks. I cannot recall the date of the second time. Mr. McDonald asked me to leave the cars there until the payments were made up. Question—Then at the time you turned these cars back to Mr. Lindley's garage, they were turned back with the understanding with the fiance company that was holding the contracts that they would be left there until the payments were paid up?

Answer—That is the way they talked to me.

(Testimony of Lewis N. Merritt.)

Question: Give up possession until you paid up?

A—I don't know that that was said. He called me and told me I would have to give up possession of the cars as I was back in my payments. The last time Mr. McDonald simply came and got them, in the month of October. At one time he talked to me when I met him at the Lindley Motor Co. in the morning. I went there to meet him. I told him I simply could not keep up my payments and he said, well, leave them here. Nothing was said as to how long they were to be left. At one time, I don't remember the particular time—I went to the bank and borrowed the money and made the payments.

I have not been in bankruptcy before but a corporation which I ran and in which I was a stockholder went into bankruptcy some years ago. I always understood that Mr. Bueneman and I owned it half and half. The claim filed here by S. H. Peters represents stockholders liability in that failure. I was a witness in the bankruptcy proceedings when the company failed. I was an officer of the corporation. I don't remember whether I was examined at great length in the proceedings of Lewis N. Merritt Company, bankrupt, in connection with my official position as an officer of that corporation, but I presume I was. That has been a good many years ago. I don't remember whether I signed the schedules in that proceeding.

Question: You knew, however, that it was the duty of the bankrupt, did you not, to schedule all of his assets?

Answer: Yes, I had that common knowledge. I know it is the duty of the Bankrupt to schedule all of his assets.

(Testimony of Lewis N. Merritt.)

Q: And you knew at the time you verified these schedules that you had an investment of \$2,000 in these two automobiles, did you not?

A: I considered that with Mr. Morris, and it was talked over as to the equity in it, or in them.

Q. Did you not testify here yesterday that you did not remember what conversation you had with Mr. Morris, and that you could not tell this Court what you told Mr. Morris and what Mr. Morris told you.

A: I said I could not tell what *i*—what we talked about, my recollection is that he advised me that he had—that that was the way to handle it.

Q: As a matter of fact, you were worried enough about the cars that you consulted your attorney about it?

A: Well, Mr. Morris and I went through everything.

Q: It was not a case on your part of forgetting the cars; that was not the reason why they were not listed; you knew you had them?

A: I couldn't tell, because, in the contracts it said I had no rights, and that they were not my property, and I was at a loss about it, and I simply left it up to my attorney.

Q: But you don't remember what you told your attorney?

A: I don't remember the exact conversation, no.

MR. TOBIN: I believe that is all.

MR. HACKER: That is all.

BANKRUPT'S EXHIBIT NO. 1: Conveyance by Lewis N. Merritt to Wm. H. Moore, Jr., as Trustee: "All of his right, title and interest in and to that certain Packard automobile and that certain Nash roadster

(Testimony of Frank McDonald.)

now in the possession of the Earl Lindley Motor Company, being the same automobiles that said bankrupt was purchasing from said Earl Lindley Motor Company on conditional sale contracts for each car respectively, and all his right, title and interest in and to the following described property:

Four pictures painted by Tabor,

Two pictures painted by DeLongpre, and

Two pictures painted by Knowles,

the interest in said last named property being that given to him by the terms of the Will of his mother, Annette W. Merritt, deceased;”

Dated December 3rd, 1927; filed in the office of the Referee, December 30th, 1927.

FRANK McDONALD,

recalled:

I am familiar with the two cars involved in this hearing, and it is my business to appraise and make collections on all kinds of automobiles, all makes. The value of the Packard car on April 1st, 1927, was around \$1100.00. The balance due on that car April 1st, 1927, was \$1016.76. The Nash car was worth about \$950.00 to \$1000.00, and there was due on it as of April 1st, 1927, \$976.56.

CROSS EXAMINATION:

Q. How did your people happen to let Mr. Merritt have those cars back, if there was more against them than they were worth?

A. It is always my object and the company has always tried to work out some plan, it don't matter who

(Testimony of Frank McDonald.)

or how much money there is involved, to try to get it paid.

The first time I took the automobile back was March 18th, 1927, and we had the car in the Earl Lindley Motor place about two weeks, when we released it. The March payment was made, which brought it down to April 5th, 1927.

The second time we took it back was on April 18th. The April payment was then behind. The car was worth at that time, \$975.00 or \$1000.00.

And the other time we took it back was on the 26th of May. When we took it back in April we retained it approximately three or four weeks. I told Mr. Merritt that we were going to hold it for a reasonable length of time. I didn't tell him that we were going to hold it until he caught up with the payments. We don't tell anybody that. We may see fit to sell a car at wholesale anytime if we repossess it.

THE SPECIAL MASTER: I do not see anything to cause me to change my views as expressed yesterday.

The only question is whether there is bad faith in not scheduling these automobiles and certain paintings, and as I stated, a reasonably prudent man, or even attorneys, might differ whether property held on contract, that has already been returned, need be schedules. This bankrupt did not have the title to these automobiles, as I understand it; they were not registered in his name.

MR. TOBIN: Yes, both were registered in his name.

THE SPECIAL MASTER: But at most all he had was a contract for the purchase of them, and they were returned prior to the filing of the schedules in bankruptcy. He might have decided that he did not own

them, and that he could not hold them; or that going into bankruptcy he should not keep up the payments, and that he would turn them back to the people who did own them, and I can see where a reasonably skilled attorney might advise him that they were not his property, and he returned them to the owner. He had no claim on the title. He might have had a very inconsequential equity in their value, but as it turned out, he had no equitable value, and apparently the Trustee did not think there was any equity; and Mr. Moore is a very careful man, and he usually takes hold of everything that he thinks has any value; but he let it go on for months here until the Bankrupt made more payments, making the cars more valuable to the estate, and then he took possession of them and sold them for only the amount that the Bankrupt has paid on them since they were repossessed. So, I can see no bad faith in not scheduling these automobiles. It probably would have been better practice to schedule them. But they were not in his possession; he turned them back to the party who owned them. The whole thing hinges on whether there was any agreement between Mr. McDonald and the Finance Company, or the Lindley Motor Company, to return them; but the Objecting Creditor has made no attempt to show that. The only thing in that connection was a question that was asked by the Court here, as to whether or not that was done, and he said "No."

MR. TOBIN: He was not a party to the contract.

THE SPECIAL MASTER: He testified there was nothing of that kind, and at any rate, there is nothing

to show that there was any agreement that the Bankrupt could leave them there during the pendency of the bankruptcy, and then go back and get them. If there was any agreement to that effect, I would hold differently.

Now, regarding the equity in the pictures. That was so slight, and the bankrupt testified that he did not know he had any equity in them, and they might be considered as household furniture or furnishings, which would be exempt; and that he had no right to them until his father died, and that he then had only a right to take a choice. He has no possession of them now, and probably never will have.

There might have been bad faith in the case, but it certainly is not in regard to the automobiles or the pictures.

Objecting Creditor's Exhibit No. 1: Conditional Sales Contract dated October 5th, 1926, between Earl Lindley Motor Company of the first part, and Lewis N. Merritt of the second part, covering the sale of the Nash roadster in question. Sale price, \$2088.84; cash payment, \$624.00; balance to be paid in installments of \$81.38, beginning November 5th, 1926, and ending April 5th, 1928.

Said contract also provided as follows:

IT IS HEREBY STIPULATED AND AGREED by and between the Seller and the Purchaser that the following are the conditions under which the above described personal property is sold and purchased:

1. The Purchaser hereby acknowledges receipt of said personal property and agrees that he has examined the same and that it is in good order and repair, and said

Purchaser further agrees that he will, at his own expense, during the life of this contract, repair any injuries sustained by said personal property, and keep the same in good order and repair as when received, and that he will pay all taxes and assessments levied or assessed against said personal property, and that he will not permit the same to be removed from his possession, to be attached or replevined, nor create nor permit to be created any lien or encumbrance against the same, on account of claims against him, or for storage, repairs, or otherwise; and said Purchaser also further agrees that the Seller may take possession of said personal property for the purpose of putting the same in repair in case the Purchaser fails to keep the said personal property in good repair, but the taking possession thereof for such purpose shall not operate as an election by the Seller to terminate this contract, and all bills for repairs done upon, and labor and material furnished, by the Seller to or for said personal property before the final payment thereon is made shall be added to the purchase price of said personal property, and be payable to the Seller on or before the 10th day of the next succeeding month and shall bear interest and be subject to all the terms of this contract, as though an original part of the purchase price of said personal property. The Purchaser further agrees that said personal property shall never be used by any one, including the Purchaser, when such use is in violation of any law or ordinance of the United States, State of California, ordinances of any County of the State of California, or of any municipality within said State, or used for any purpose whereby it is liable

to seizure by reason of the violation of any of the aforesaid laws or ordinances, and it is further agreed that said personal property shall never be taken from the possession of such Purchaser by reason of any alleged violation by the Purchaser or any other reason, of any of said laws or ordinances.

2. The Purchaser agrees to pay all taxes and assessments levied or assessed against said personal property, but in the event that said Purchaser shall fail to pay said taxes and assessments the Seller may, at his option, pay the same, and all sums so paid by the Seller shall be added to the purchase price of said personal property and be payable to the Seller on or before the 10th day of the next succeeding month, and shall bear interest and be subject to all the terms of this contract, as though an original part of the purchase price of said personal property.

3. The Purchaser agrees not to sell, attempt to sell, lease, mortgage, hypothecate, or otherwise dispose of said personal property, or take the same out of the State of California, during the life of this contract, or any of his rights hereunder, and any assignment of this contract, or any of the Purchaser's rights hereunder, by the Purchaser, or by execution or other legal process, or otherwise, or the transfer thereof by process of law, or otherwise, shall, at the option of the Seller, terminate all rights hereunder to purchase said personal property. The Purchaser agrees not to use or permit said personal property to be used for hire, or in a race or speed test, during the life of this contract, without the written consent of the Seller. The Purchaser agrees not to use or permit said personal property to be used for, or in connection with, any act prohibited by law.

4. The Seller may, but shall not be obliged so to do, keep said property insured in a company selected by the Seller, and in favor of the Seller, for fire, theft, confiscation, wrongful conversion, and such other forms of insurance as may be required by the Seller, in such an amount as the Seller shall desire; said insurance shall be at the expense of the Purchaser, payment for the first premium thereon to be made by the Purchaser at the time of the execution of this contract, and payment of subsequent premiums to be made by the Purchaser on demand of the Seller or the Insurance Company furnishing such insurance. In the case of any damage to or loss of said personal property, either partial or total, all insurance money collected shall be retained by and belong to the Seller, and any such loss, whether insured or not, shall not relieve the Purchaser from carrying out the terms of this contract; and making the payments as provided for herein; provided, however, that the Seller shall credit any insurance collected upon the unpaid balance due or to become due under this contract, and in the event there is any surplus, such surplus shall belong to the Purchaser; and provided, further, that, should the Seller so elect, he may apply any insurance collected to the repair and restoration of said personal property instead of crediting the same upon the indebtedness of the Purchaser.

5. The Purchaser agrees to save the Seller harmless from any and all liabilities or alleged liabilities, including all costs and attorneys' fees, for all injury or damages to persons or properties caused in any manner by the use of said personal property.

6. In the event the Purchaser fails or neglects to comply with any of the terms, covenants or conditions of this contract, or to make *of* any of the several payments provided for herein, when due, or in the event that the Purchaser shall become financially involved, or insolvent, or shall be adjudicated a bankrupt, or shall fail to pay the premium on said insurance on demand, or in case, of any unusual or unreasonable depreciation in the value of said personal property, the Seller, at his option, and without notice to the Purchaser, may elect to declare the whole purchase price immediately due and payable, or the Seller may without notice to the Purchaser, declare all of the rights of the Purchaser under this contract terminated, and without demand first made, and with or without legal process. immediately take possession of said personal property *wherever* found, using all necessary force so to do, and hold the same discharged from further liability under this contract, and the Purchaser waives all claims for damages due to, or arising from or connected with any such taking. In the event the Seller elects to take possession of such personal property, all of the rights of the Purchaser under this contract shall immediately terminate, and all payments theretofore made hereunder shall belong absolutely to the Seller; provided, however, that such termination shall not release the Purchaser from any payments due and unpaid at the time of such termination, and the Purchaser hereby agrees to pay to the Seller any and all sums which may be so due and unpaid to said Seller at the time thereof.

7. Until the Purchaser has fully complied with all the terms, covenants and conditions of this contract, and

made all of the payments as herein provided, said personal property, including all parts, accessories and equipment now or hereafter attached to or used in connection with said personal property shall belong to, and the title to said personal property shall remain in the Seller. Possession of said personal property shall give the Purchaser no title or interest therein and no rights except as herein provided. If the Purchaser shall fully comply with all of the terms, covenants and conditions of this contract, and make all of the payments as herein provided, the Seller agrees to give a bill of sale of said personal property to the Purchaser and convey title to him.

8. It is agreed that the Seller may assign and transfer his rights under this contract, and any such assignment, whether merely for the purpose of security or otherwise, shall vest in the assignee of the Seller all of the rights hereby reserved and granted to the Seller, together with title to said personal property. In the event of any such assignment, all money payable under this contract by the Purchaser shall be paid to such assignee of the Seller, in full, without recoupment, set-off, or counter-claim of any sort whatsoever, and the Purchaser shall be estopped to deny as to such assignee any of the statements contained in this contract, or to allege that there were any representations made by the Seller which are not contained in this contract.

9. In the event that the Seller, because of the failure of the Purchaser to perform any of the promises and covenants herein provided for, shall elect, under the terms of this contract to retake possession of said personal property or to collect any installment or installments of the purchase price or to enforce any other

remedy hereunder, the Purchaser agrees to pay to the Seller any expenses incurred by the Seller in recovering the possession of said personal property, or in collecting any installment or installments of the purchase price, or in enforcing any other remedy hereunder, including a reasonable attorney's fees, which shall in no case be less than the sum of One Hundred (\$100.00) Dollars.

10. Should the Purchaser fail to pay any installment above specified, when due, it is hereby agreed that the Seller may refer the matter of the collection of such delinquent installment to any person or collection agency or to the collection department of the Seller, or his assignee for collection, and if the same be so referred, the purchaser agrees to pay to the Seller a reasonable collection charge, which shall in no event be less than two per cent of said delinquent installment.

11. The Purchaser agrees forthwith to properly register said personal property and procure a license therefor from the Motor Vehicle Department of the State of California, and to immediately report the number thereof in writing to the Seller, who shall have the right to insert the State license number in the blank above provided therefor.

12. Time and each of its terms, covenants and conditions are hereby declared to be of the essence of this contract, and acceptance by the Seller of any payment hereunder, after the same is due, shall not constitute a waiver by him of this or any other provision of this contract.

13. It is agreed that this instrument contains the entire agreement between the contracting parties and that no statement, promise or inducement made by any party

hereto, or employee, agent or salesman of either party hereto, which is not contained in this written contract, shall be binding or valid; and this contract may not be enlarged, modified or altered except by endorsement hereon, and signed by the parties hereto.

14. It is agreed that the Purchaser will exhibit said personal property and allow inspection thereof at any time upon demand of the Seller and that the Purchaser will notify the Seller of any change of his address.

15. This contract is executed in quadruplicate, of which concurrently with the execution thereof three (3) copies are delivered to the Seller and one (1) copy is delivered to the Purchaser and the receipt of a copy of this contract is hereby acknowledged by the Purchaser. This contract shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

Objecting Creditor's Exhibit No. 2, Conditional Sales Contract, dated October 5th, 1926, covering a used Packard sedan, the car in question, sale price, \$2176.14; cash payment, \$651.00; balance payable in installments of \$84.73, beginning November 5th, 1926, and ending April 5th, 1928.

This contract is identical in terms and conditions except as above stated with Objecting Creditor's Exhibit No. 1. Both of these contracts seem to have been assigned to the Commercial Discount Company.

Settled and allowed this 2nd day of May 1928.

Wm P James
District Judge

[Endorsed]: Statement of Testimony Take on Hearing of Objections to Discharge. Lodged Apr. 3, 1928, at 20 min. past 1 o'clock P. M. R. S. Zimmerman clerk, by B. B. Hansen, deputy. Settled Statement. Filed May 2, 1928 at 10 a. m. R. S. Zimmerman, clerk, by Edmund L. Smith, deputy clerk.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

In Bankruptcy 9569-J

In the Matter of)
LEWIS N. MERRITT,) ORDER
Bankrupt)

The Court having examined the statement of facts prepared by the petitioning bankrupt, and the amendments thereto proposed by the Objecting Creditor, and the Court having considered the same, orders:

IT IS HEREBY ORDERED that the said statement of facts as amended be, and the same is hereby approved.

Wm. P. James
District Judge.

[Endorsed]: Original. In the District Court of the United States, Southern District of California, Southern Division. In Bankruptcy 9569-J. In the Matter of Lewis N. Merritt, Bankrupt. Order. Filed Apr. 18, 1928, at 30 min past 12 o'clock P. M. R. S. Zimmerman Clerk, B. B. Hansen, deputy. Nicholas W. Hacker 419 Pacific S. W. Bldg., Pasadena, Calif

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

In the Matter of	)	No. 9569-J In Bkcty.
LEWIS N. MERRITT,	)	MEMORANDUM OF
Bankrupt.	)	CONCLUSIONS,
	)	AND ORDER

Objections to the discharge of the bankrupt having heretofore been filed, and the issue so made having been referred to Referee Irwin as Special Master to take the testimony and report the facts and his conclusions thereon; and the said Referee having, after due hearing, reported against the objections of the creditor and having recommended that the discharge be granted; and the objecting creditor having taken exceptions to said report, and said exceptions having been duly presented and argued and submitted for decision, and the court being advised in the matter:

The Court now concludes that upon the evidence presented to the Special Master it was made to appear that the bankrupt had wilfully withheld from his schedules the true facts respecting his equity in the two certain automobiles referred to by the objecting creditor, and that said bankrupt did, while being examined under oath before the Referee in Bankruptcy in the due course of the said bankruptcy proceedings, withhold and conceal the true facts concerning the equity possessed by him and the facts concerning his possession and his right to possession of said automobiles; and the Court therefore finds that the findings and conclusions of the Special Master are not sustained by the evidence;

It is ordered that the exceptions to the report of the Special Master in the particulars hereinabove set forth are sustained; and it is ordered that the discharge of said bankrupt be and it is denied.

Dated this 12th day of March, 1928.

Wm. P. James
District Judge

[Endorsed]: No. 9569-J. In Bkcty. U. S. District Court, Southern District of California. In the matter of Lewis N. Merritt, Bankrupt. Memorandum of Conclusions, and Order. Filed 5 o'clock P. M. Mar. 12, 1928. R. S. Zimmerman Clerk, By Murray E. Wire, deputy clerk.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION IN BANKRUPTCY NO. 9569-J

In the Matter of)
LEWIS N. MERRITT,) NOTICE OF
Bankrupt) APPEAL

To William T. Craig, Esq., Attorney for S. H. Peters,
Objecting Creditor:

PLEASE TAKE NOTICE that the above named Bankrupt, conceiving himself aggrieved by the final order and decree entered on the 12th day of March, 1928, in the above entitled proceeding, dismissing the petition and application for discharge and denying the said Bankrupt a discharge in bankruptcy from his debts.

does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, Southern Division.

Lewis N. Merritt

Bankrupt.

Nicholas W. Hacker

Attorney for Bankrupt.

[Endorsed]: Original 9569-J. In the District Court of the United States Southern District of California Southern Division. In Bankruptcy No. 9569-J. In the matter of Lewis N. Merritt Bankrupt. Notice of Appeal. Service of the within Notice of Appeal is hereby admitted this 21 day of March, 1928. S. H. Peters. Filed Mar. 21 1928 at 30 min. past 1 o'clock P. M. R. S. Zimmerman Clerk, B. B. Hansen deputy. Nicholas W. Hacker Counselor at Law Pacific Southwest Bldg. Pasadena, Calif.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION
IN BANKRUPTCY 9569-J.

In the Matter of)
LEWIS N. MERRITT,) ASSIGNMENT OF
Bankrupt) ERRORS

Now comes Lewis N. Merritt, Bankrupt and complainant, and files the following assignment of errors on appeal from order of this Court dated March 12th, 1928.

First: That the United States District Court for the Southern District of California, Southern Division, erred in finding that the Bankrupt had wilfully withheld from his schedules the true facts respecting his equity in two

certain automobiles referred to by the objecting creditor.

Second: That the Court erred in finding that said Bankrupt did, while being examined under oath before the Referee in Bankruptcy, in the due course of said bankruptcy proceeding, withhold and conceal the true facts concerning the equity possessed by him in said automobiles.

Third: That the Court erred in finding that said Bankrupt while being examined under oath before the Referee in Bankruptcy, withheld and concealed the facts concerning his possession and his right to possession of said automobiles.

Fourth: That the Court erred in finding that the Findings and Conclusions of the Special Master, to whom said petition for discharge was referred in due course, were not sustained by the evidence.

Fifth: That the Court erred in sustaining the objections to the report of the Special Master.

Sixth: That the Court erred in denying a discharge herein to the said Bankrupt.

Seventh: That the Court erred in failing to find that the Bankrupt should be granted a discharge from his debts unless and except he has committed an offense or performed one of the acts specified and set forth in Section 14 of the United States Bankruptcy Act, and the amendments thereto.

WHEREFORE, he prays that said order may be reversed and his discharge granted.

Lewis N. Merritt

By Nicholas W. Hacker

Nicholas W. Hacker

Solicitor for Bankrupt.

[Endorsed]: 9569-J. Original. In the District Court of the United States Southern District of California, Southern Division. In Bankruptcy No. 9569-J. In the matter of Lewis N. Merritt Bankrupt. Assignment of Errors. Copy received this 23d day of March, 1928, W. T. Craig, Atty for W. H. Moore, Trustee Estate Lewis N. Merritt, Bkt. Filed Mar. 23, 1928, at 10 min. past 2 o'clock P. M. R. S. Zimmerman, Clerk. B. B. Hansen, deputy. Nicholas W. Hacker, counselor at law, Pacific Southwest Bldg. Pasadena Calif

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

In the Matter of	)	In Bankruptcy
LEWIS N. MERRITT,	)	No. 9569-J.
Bankrupt	)	ORDER FOR COST
	)	BOND.

It appearing that the Bankrupt has filed Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the order entered in the above entitled case on the 12th day of March, 1928,

IT IS ORDERED that the amount of cost bond of said appeal herein be and hereby is fixed in the sum of Two Hundred Fifty Dollars (\$250.00), conditioned as required by law and rule of this court.

Wm P James

United States District Judge

Dated March 28, 1928.

[Endorsed]: Original. In the District Court of the United States, for the Southern District of Cali-

fornia, Southern Division. In the Matter of Lewis N. Merritt, Bankrupt. No. 9569-J. Order for Cost Bond. Filed Mar. 28, 1928, at 30 min. past 12 o'clock p. m. R. S. Zimmerman, clerk B. B. Hansen, deputy. Nicholas W. Hacker Counselor at law, Pacific Southwest Bld. Pasadena Calif.

(Cut)
Company's Home
Office Building
100 Broadway, New York

American Surety Company
of New York
Capital \$5,000,000.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

IN THE MATTER OF) IN BANKRUPTCY
LEWIS N. MERRITT,)
BANKRUPT.) NO. 9569-J

KNOW ALL MEN BY THESE PRESENTS that the undersigned, AMERICAN SURETY COMPANY OF NEW YORK, a Corporation duly organized and existing under the laws of the State of New York, duly authorized to transact business within the State of California, as Surety, is held and firmly bound unto S. H. PETERS, Objecting Creditor of the Estate of Lewis N. Merritt, Bankrupt, in the penal sum of TWO HUNDRED FIFTY (\$250.00) DOLLARS, well and truly to be paid to the said S. H. PETERS, Objecting Creditor herein, for the payment of which we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated at Los Angeles, California, this 28th day of March, 1928.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT

WHEREAS, Lewis N. Merritt, Bankrupt petitioner, has appealed to the United States Circuit Court of Appeals of the Ninth Circuit from the order of the said District Court of the United States for the Southern District of California, Southern Division, denying the petition of the said Lewis N. Merritt, Bankrupt, for his discharge, which said final order was made and entered of record March 12, 1928, in the records and files of said Court.

NOW, THEREFORE, if the said Lewis N. Merritt, Bankrupt, shall prosecute his said appeal to effect and answer all costs and damages that may be awarded against him in said appeal, if he fails to make his said appeal good, then this obligation shall be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, the seal and signature of the said surety company is hereto affixed and attested by its duly authorized officers in the City of Los Angeles, State of California, District aforesaid, this 28th day of March, 1928.

AMERICAN SURETY COMPANY
OF NEW YORK

[Seal]

By A. M. Wold

Resident Vice-President

Attest: I. Taylor

Resident Assistant Secretary

Approved March 28 1928

Wm P James Judge

Premium charged for this bond is \$10.00 per annum.

State of California,)
)ss.:
 County of Los Angeles)

On this 28th day of March, A. D. 1928, before me, Frank McWhorter a Notary Public in and for Los Angeles County, State of California, residing therein, duly commissioned and sworn, personally appeared A. M. Wold personally known to me to be the Resident Vice-President and I. Taylor personally known to me to be the Resident Assistant Secretary of the AMERICAN SURETY COMPANY OR NEW YORK, the Corporation described in and that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in the Certificate first above written.

[Seal]

Frank McWhorter

Notary Public in and for the County of Los Angeles.
 State of California.

My commission expires Feb. 3, 1932.

[Endorsed]: 9569-J. Bkcy. Principal and American Surety Company of New York. Surety. To S. H. Peters, Objecting Creditor, Obligee. Bond for \$250.00 Filed Mar. 28, 1928 at ...min past 5 o'clock P. M. R. S. Zimmerman, clerk. B. B. Hansen, deputy. Dated 3/28/28

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA SOUTHERN DIVISION

In BANKRUPTCY 9569-J.

In the Matter of)
 LEWIS N. MERRITT,)
 Bankrupt) PRAECIPE

To the Clerk of the United States District Court for
the Southern District of California, Southern Di-
vision:

You are hereby requested to make a transcript of
record to be filed in the United States Circuit Court
of Appeals for the Ninth Circuit, pursuant to an ap-
peal allowed in the above entitled proceeding, and to
include in such transcript the following:

1. Order of adjudication and reference.
2. Petition of Lewis N. Merritt for his discharge.
3. Order of Compliance.
4. Objections of creditor to discharge.
5. Report of Special Master recommending discharge.
6. Exceptions of Objecting Creditor to Special Mas-
ter's report.
7. Testimony taken before the Master as settled
by the Court.
8. Order overruling Master's report and denying
discharge.

9. Notice of Appeal.
10. Assignment of Errors.
11. Order fixing cost bond.
12. Cost bond.
13. Praecipe.

Nicholas W. Hacker
Solicitor for Appellant Bankrupt

[Endorsed]: Original. In the District Court of the United States Southern District of California, Southern Division. In Bankruptcy 9569-J. In the Matter of Lewis N. Merritt, Bankrupt. Praecipe. Service of the foregoing Praecipe admitted this 3 day of April, 1928. W. T. Craig Solicitor for Appellee and Objecting Creditor Filed Apr. 3 1928 at 20 min past 1 o'clock P. M. R. S. Zimmerman, clerk B. B. Hansen, deputy. Nicholas W. Hacker Counselor at Law. Pacific Southwest Bldg. Pasadena, California.

IN THE DISTRICT COURT OF THE UNITED
 STATES SOUTHERN DISTRICT OF CALI-
 FORNIA SOUTHERN DIVISION
 In BANKRUPTCY 9569-J.

In the Matter of	)	CLERK'S
LEWIS N. MERRITT,	)	CERTIFICATE.
Bankrupt)	

I, R. S. ZIMMERMAN, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 81 pages, numbered from 1 to 81, inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the order of adjudication and reference, petition of Lewis N. Merritt for discharge, order of compliance, objections of creditor to discharge, report of special master recommending discharge, exceptions of objecting creditor to special master's report, testimony as settled by the court, order overruling master's report and denying discharge, notice of appeal, assignment of errors, order fixing cost bond, cost bond and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to 12.50 and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 14th day of May, in the year of Our Lord One Thousand Nine Hundred and Twenty-eight, and of our Independence the One Hundred and Fifty-second.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By Edmund L. Smith
Deputy.

